



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 15, 1996

Ms. Phoebe Knauer
Director, Information Release
Texas Employment Commission
101 East 15th Street, Room 651
Austin, Texas 78748

OR96-0337

Dear Ms. Knauer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32811.

The Texas Employment Commission (the "commission") received a request for information concerning any complaints filed with the commission regarding the requestor. You contend that the requested information may be excepted from required public disclosure under the informer's privilege as incorporated under section 552.101 of the Government Code.

Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5; 391 (1983). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

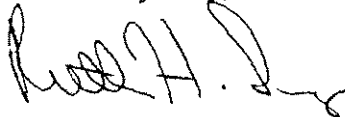
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the "informer's privilege" aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3. The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 (1990) at 5. However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2.

You state that the informant notified the commission of violations of the Texas Unemployment Compensation Act which carry criminal penalties. *See* Labor Code §§ 214.004 (fraudulently avoiding contribution or payment of benefits), .005 (failure or refusal to make contribution or other payment). Accordingly, you may withhold information tending to identify the informant under section 552.101 of the Government Code. We have marked the information that may be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LBC/ch

Ref: ID# 32811

Enclosures: Marked documents

cc: Mr. William D. Hartman
Owner
Hartman Plumbing
P.O. Box 1426
Bastrop, Texas 78602
(w/o enclosures)